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MAR 26 2010

OFFICE OF PETITIONS

In re Application of Earley et al.	:	
Application No. 10/072,391	:	Decision on Petition
Filing Date: February 5, 2002	:	
Attorney Docket No. 13DV-14119	:	

This is a decision on the petition filed January 26, 2010, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application. The petition is filed in the alternative under 37 CFR 1.137(a).

The petition under 37 CFR 1.181 is **granted**.

On October 14, 2008, the Office mailed a Notice of Allowance requiring payment of the issue fee and publication fee. The Notice set a statutory period for reply of three (3) months. The Office did not receive a reply to the Notice of Allowance. As a result, the Office deemed the application to have become abandoned as of January 15, 2009.

The Office mailed a Notice of Abandonment on February 10, 2009.

Petitioner states the Notice of Allowance was never received at the address of record. The Office notes a copy of the Notice of Allowance and a copy of the Notice of Allowability mailed October 14, 2008, were sent to petitioner as an attachment to an Office decision mailed May 15, 2009, in response to a prior petition. The issue fee and publication fee were filed with the instant petition.

Petitioner has provided a showing sufficient to establish non-receipt of the Notice of Allowance.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Page 4 of the petition states, "Applicants respectfully request that the holding of abandonment be withdrawn, or in the alternative, that the subject application be revived." Petitioner submitted a \$540 as a petition fee. The Electronic Patent Application Fee Transmittal sheet identifies the petition type corresponding with the fee as "Petition-revive unavoid. abandoned appl." Based on the prior facts, petitioner appears to be requesting alternative relief under 37 CFR 1.137(a).

Since the petition has been granted under 37 CFR 1.181, petitioner's request to have the petition considered under 37 CFR 1.137(a) is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, the petition fee of \$540 has been credited back to petitioner's deposit account.

The Office of Data Management, Patent Publication Branch, will be informed of the instant decision and the application will be issued as a patent in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read 'Charles Brantley', with a stylized flourish at the end.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions